

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF MONTANA

BILLINGS DIVISION

FILED
BILLINGS DIV.

2008 MAY 27 AM 10 10

PATRICK E. DUFFY, CLERK

SHELLY ANN TISCHLER,

Plaintiff,

vs.

BILLINGS WOMEN'S PRISON,

Defendant.

CV-07-173-BLG-RFC-CSO

BY
DEPUTY CLERK

ORDER ADOPTING FINDINGS
AND RECOMMENDATIONS OF
U.S. MAGISTRATE JUDGE

On March 24, 2008, United States Magistrate Judge Carolyn S. Ostby entered her Findings and Recommendation. *Doc. 11*. Magistrate Judge Ostby recommends this Court dismiss Plaintiff's Second Amended Complaint (*Doc. 10*)¹ without prejudice for failure to name a defendant who is nor protected by immunity and for failure to comply with the Court's Order to amend her complaints to comply with Rule 8, Fed.R.Civ.P. Magistrate Judge Ostby further recommends the docket reflect that the Court certify pursuant to Rule 24(3)(A) Fed.R.App.P. that any appeal of this decision would not be taken in good faith.

Upon service of a magistrate judge's findings and recommendation, a party has 10 days to file written objections. 28 U.S.C. § 636(b)(1).² In this matter, no party filed objections to the March 24, 2008 Findings and Recommendation. Failure to object to a magistrate judge's

¹The Court's review of Judge Ostby's Findings and Recommendation is largely moot considering that Plaintiff filed her Third Amended Complaint (*Doc. 16*) on April 30, 2008.

²In prisoner cases, this Court extends the time to object to twenty days in order to take into account the Supreme Court's ruling in *Houston v. Lack*, 487 U.S. 266, 270-71 (1988), and the somewhat greater mailing time that is involved in sending documents into and out of a prison facility.

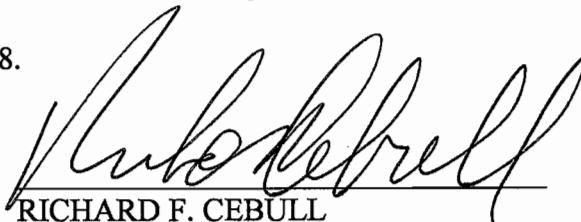
findings and recommendation waives all objections to the findings of fact. *Turner v. Duncan*, 158 F.3d 449, 455 (9th Cir. 1999). However, failure to object does not relieve this Court of its burden to review de novo the magistrate judge's conclusions of law. *Barilla v. Ervin*, 886 F.2d 1514, 1518 (9th Cir. 1989).

After an extensive review of the record and applicable law, this Court finds Magistrate Judge Ostby's Findings and Recommendation are well grounded in law and fact and adopts them in their entirety.

Accordingly, **IT IS HEREBY ORDERED** Plaintiff's Second Complaint (*Doc. 10*) is **DISMISSED WITHOUT PREJUDICE**. Pursuant to Fed.R.App.P. 24(a)(4)(B), it is **CERTIFIED** that any appeal taken by Plaintiff from this disposition would not be taken in good faith.

The Clerk of Court shall notify the parties of the making of this Order.

DATED the 27th day of May, 2008.


RICHARD F. CEBULL
UNITED STATES DISTRICT JUDGE